

Investigation by the Department of Public Utilities on its own motion into the compliance of New England Telephone and Telegraph Company d/b/a NYNEX with the requirements of Section 271 of the Telecommunications Act of 1996, 47 U.S.C. § 271, for authority to provide in-region, interLATA service.

### VOTE TO OPEN INVESTIGATION

#### I. INTRODUCTION

Under Section 271 of the Telecommunications Act of 1996 ("Act"), a Bell Operating Company ("BOC") may begin providing in-region interLATA services upon determination by the Federal Communications Commission that it has satisfied the requirements of Section 271 for each state in which such FCC authorization is sought. 47 U.S.C. § 271(c)(1). Section 271(c)(2)(A) requires that (1) the BOC either provide access and interconnection to a predominately facilities-based Competing Local Exchange Carrier ("CLEC") pursuant to a state-approved interconnection agreement under Section 271(c)(1)(A) or offer such access and interconnection pursuant to a state-approved statement of generally available terms and conditions ("SGAT") under Section 271(c)(1)(B), and (2) such access and interconnection meet the requirements of the "Competitive Checklist" under Section 271(c)(2)(B). The fourteen-point competitive checklist requires that such access and interconnection include:

- Interconnection in accordance with the requirements of Sections 251(c)(2) and 252(d)(1);
- Nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1);
- Nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by NYNEX at just and reasonable rates in accordance with the requirements of section 224;
- Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services;
- Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services;

- Local switching unbundled from transport, local loop transmission, or other services;
- Nondiscriminatory access to 911 and E911 services, directory assistance services, operator call completion services;
- White pages directory listings for customers of the carrier's telephone exchange service;
- Nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers;
- Nondiscriminatory access to databases and associated signaling necessary for call routing and completion;
- Interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements;
- Nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of Section 251(b)(3);
- Reciprocal compensation arrangements in accordance with the requirements of Section 252(d)(2); and
- Telecommunications services are available for resale in accordance with the requirements of Sections 251(c)(4) and 252(d)(3).

47 U.S.C. § 271(c)(2)(B).

Under Section 271(d)(3), the FCC must approve or deny the BOC's request to provide in-region, interLATA service within 90 days of receiving the BOC's application.<sup>(1)</sup> In making its determination on a BOC application for authority to provide in-region interLATA service, the Act requires that the FCC consult with the United States Department of Justice and the state commission for the state that is the subject of the application. 47 U.S.C. § 271(d)(2). In their consultative role, state commissions must "verify the compliance of the [BOC] with the requirements of subsection (c) [of Section 271] [*i.e.*, provision of access and interconnection to at least one CLEC under an approved agreement or the availability of access and interconnection under an approved

SGAT, which meet the requirements of the competitive checklist]." 47 U.S.C. § 271(d)(2)(B).

The FCC has ruled that states are required to provide their findings to the FCC within 20 days of submission of the BOC's application. FCC Public Notice, December 6, 1996. In informal discussions with the FCC, the FCC has indicated that it will rely on states to develop a detailed evidentiary record on the BOC's compliance with the requirements of Section 271.

## II. VOTE TO OPEN INVESTIGATION

New England Telephone and Telegraph d/b/a NYNEX ("NYNEX") is the only BOC operating in Massachusetts. On March 10, 1997, NYNEX informally notified the Department of Public Utilities ("Department") that it anticipates filing a Section 271 application to provide interLATA services in Massachusetts with the FCC during the third quarter, 1997. In view of the short time periods under the Act for state and FCC action, and the need for Massachusetts to build a factual record on the question of NYNEX's compliance with the Section 271 requirements, the Department has determined that it is necessary and appropriate to open an investigation now, in advance of NYNEX's filing for authority to provide in-region, interLATA services. Accordingly, on its own motion, the Department hereby votes to open an investigation into NYNEX's compliance with the requirements of Section 271 of the Act. This investigation is docketed as D.P.U. 97-38.

Consistent with our consultative role with the FCC under Section 271(d)(2)(B), the purpose of this investigation is to develop a factual record verifying NYNEX's compliance with the Section 271 requirements, in advance of any NYNEX filing to the FCC seeking authorization to provide interLATA services in Massachusetts. To this end, this investigation should include, but not be limited to, an examination of NYNEX's compliance with the requirements of Section 271(c)(1)(A) relating to the presence of a facilities-based carrier and Section 271(c)(1)(B) relating to a statement of terms and conditions, and compliance with the fourteen-point competitive check list in Section 271(c)(2)(B).

The Department invites all interested persons who are substantially and specifically affected by the issues under investigation to petition to intervene in this proceeding. Petitions to intervene in this docket must be filed with the Secretary of the Department by 5:00 p.m., on April 4, 1997. The Department will hold a procedural conference on April 7, 1997, beginning at 10:00 a.m., at its offices in Boston, to establish a procedural schedule for the orderly conduct of the investigation. The Department intends for this proceeding to be conducted as an "adjudicatory proceeding," as defined in G.L. c. 30A, Section 1(1).

To ensure that the Department has the most current information at the start of this proceeding concerning NYNEX's plans to provide interLATA services in Massachusetts, the Department requires NYNEX to submit a preliminary copy of its FCC application by

April 1, 1997. In addition, to ensure that the Department and interested persons have sufficient advance notice of NYNEX's Section 271 application, the Company is required to notify the Department of its intent to file an application with the FCC for authority to provide interLATA services in Massachusetts, not less than 90 days prior to the submission of that application.

### III. ORDER

Accordingly, the Department

VOTES: To open an investigation into the compliance of New England Telephone and Telegraph Company d/b/a NYNEX with the requirements of Section 271 of the Telecommunications Act of 1996; and it is

ORDERED: That within three business days of the date of this Order, the Secretary of the Department shall serve a copy of this Order on the Attorney General of the Commonwealth; all parties to D.P.U. 94-185; the Consolidated Arbitrations; D.P.U. 96-72; D.P.U. 96-106; D.P.U. 96-108; D.P.U. 96-110; D.P.U. 96-114; D.P.U. 97-15; D.P.U. 97-23; D.P.U. 97-25; D.P.U. 97-26; D.P.U. 97-35; and all other carriers on NYNEX's Interconnection Requester list; and it is

FURTHER ORDERED: That within seven days of the date of this Order, the Secretary of the Department shall publish the accompanying notice in the list of newspapers attached to the notice; and it is

FURTHER ORDERED: That by April 1, 1997, New England Telephone and Telegraph Company d/b/a NYNEX shall provide the Department with a preliminary copy of its FCC application to provide interLATA services in Massachusetts; and it is

FURTHER ORDERED: That NYNEX shall notify the Department of its intent to file an application with the FCC for authority to provide interLATA services in Massachusetts not less than 90 days prior to submitting that application to the FCC.

By Order of the Department,

John B. Howe

Chairman

Janet Gail Besser

Commissioner

1. The FCC shall not approve an application unless (1) the BOC has met the requirements of Section 271(c)(1) by either providing access and interconnection to one or more CLECs under state-approved interconnection agreements that meet the competitive checklist, or by making available access and interconnection under a state-approved SGAT that offers all of the items included in the competitive checklist; (2) "the requested authorization [for in-region interLATA service] will be carried out in accordance with the [separate affiliate] requirements of section 272"; and (3) "the requested authorization is consistent with the public interest, convenience, and necessity."